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Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

KELLY-SEXTON INC. PROFIT SHARING PLAN  
AND TRUST; T. MICHAEL KELLY, in his capacity  
as Trustee for the Kelly-Sexton Inc. Profit Sharing  
Plan and Trust; KEVIN M. KELLY, in his capacity  
as Trustee for the Kelly-Sexton Inc. Profit Sharing  
Plan and Trust; and TIMOTHY SEXTON, in his

Adv. Pro. No. 10-05147 (SMB)

capacity as Trustee for the Kelly-Sexton Inc. Profit  
Sharing Plan and Trust,

Defendants.

**NOTICE OF MEDIATION REFERRAL**

On November 10, 2010, this Court entered the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order (the “Order”)<sup>1</sup> [Adv. Pro. No. 08-01789 (SMB), Dkt. No. 3141]. Pursuant to the Notice of Applicability filed by Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), in this Adversary Proceeding on December 02, 2010 [Dkt. No. 2], the Order and the avoidance procedures contained therein (the “Avoidance Procedures”) are applicable to the instant matter.

On April 17, 2014, Defendants Kelly-Sexton, Inc. Profit Sharing Plan and Trust, T. Michael Kelly, Kevin M. Kelly and Timothy Sexton filed a motion to dismiss this adversary proceeding [Dkt. No. 29] pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable by Bankruptcy Rule 7012 (a “Rule 12(b)(6) Motion”).

Pursuant to the Avoidance Procedures, upon the filing of a Rule 12(b)(6) Motion, the issues raised in such motion, together with the issues raised in the Complaint, are immediately referred to mediation. Avoidance Procedures, ¶2D.

Pursuant to the Avoidance Procedures, within 14 calendar days after the filing of this Notice of Mediation Referral, the Trustee and Defendants (the “Parties”) shall choose a mediator

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<sup>1</sup> All terms not defined herein shall be given the meaning ascribed to them in the Order.

in accordance with the Mediation Order. If the Parties are unable to agree on a mediator, the Court shall appoint one in accordance with the Mediation Order. Avoidance Procedures, ¶5C.

Dated: May 16, 2014

Of Counsel:

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